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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-867

THE OKLAHOMA PUBLISHING COMPANY, a Corporation,
Petitioner,
v.
THE DISTRICT COURT OF OKLAHOMA COUNTY, and THE HONORABLE CHARLES E. HALLEY, Acting Associate District Judge Thereof,
Respondents.

On Petition for a Writ of Certiorari to the
Supreme Court of Oklahoma

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

QUESTIONS PRESENTED

1. Whether the Supreme Court of Oklahoma erred in upholding respondent trial judge's order prohibiting petitioner news association from disseminating illegally granted or acquired identifying information about a juvenile charged with delinquent conduct in order to protect the state's policy interest and the child's individual right to treatment and rehabilitation?

2. Whether the Oklahoma Supreme Court's decision holding the application to vacate the pretrial order on substantive

and procedural grounds a waiver of the alleged defect of personal service was a denial of due process under the First and Fourteenth Amendments?

STATEMENT OF THE CASE

While respondents[1] agree in large part with the facts as set forth in the Petition for Certiorari, there are additional, disputed facts which respondent feels are material to this Court's consideration of the Petition.

1. The initial detention hearing of the juvenile in this case was held before Special Judge Michael Tullius on July 28, 1976. On that day, prior to the hearing, a reporter stopped Judge Halley in the Courthouse hallway and asked him where L.B.'s hearing was to be held. When Judge Halley replied he did not know who the person was, the reporter informed him that L.B. was the child charged with shooting the railroad switchman. Furthermore, at the request of a photographer, a court clerk asked Judge Tullius if the child's picture could be taken; the judge said no.

2. On August 5, 1976, petitioner's newspaper, The Daily Oklahoman, carried a story of the Oklahoma County District Attorney's intent to challenge the restrictive order issued on August 3, 1976. This article setting forth the date and time of the scheduled hearing evidenced petitioner's prior knowledge of the pretrial order and the upcoming opportunity to contest its provisions.

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[1] Respondents in this case are the District Court of Oklahoma County and the Honorable Charles E. Halley, Acting Associate District Judge. The respondents have been represented throughout all appellate proceedings by the attorney for the juvenile, Larry Spears, Esq. Mr. Spears will be joined in his appearance before the U.S. Supreme Court by David C. Howard, Attorney from the National Juvenile Law Center.

3. The hearing was held as scheduled on August 5 with several of petitior r's employees present. The District Attorney, Andrew Coats, asked that the Pretrial Order be modified "insofar as it attempts to place restrictions upon the District Attorney, his assistants and employees, defense counsel, or the media, from disclosing legitimate information in regard to the proceedings. . . ." (District Attorney's Motion to Modify). Respondent allowed the district attorney to argue the case both on behalf of the media and the prosecutor's office. At the close of the hearing the respondent judge entered the Modification of Pretrial Order found at Appendix A-2 of Petitioner's Writ. This Order lifted the restrictions placed on defense counsel and the district attorney's office while continuing the ban on publication in the news media of the name or photograph of the child connected with the case.

4. On August 10, 1976, petitioner filed a Special Appearance and Application to vacate the Pretrial Order on grounds that it denied petitioner procedural due process and substantive First Amendment rights. On August 16, 1976, respondent conducted a hearing on petitioner's request at which petitioner fully propounded arguments in support of its application. Following arguments of counsel, including the juvenile defense attorney's offer of proof and oral stipulation by petitioner's counsel regarding the submission of expert testimony concerning the pernicious effects of publicity upon the subject child and the intention of the juvenile's parents to rear the child in Oklahoma County (a large urban area), the respondent court took judicial notice of the adverse impact of said identifying publicity upon the juvenile's peers and its circumvention of state rehabilitative goals. (Transcript of hearing pp. 94-96).

5. On January 12, 1977, respondent held the juvenile's dispositional hearing committing the child to the custody of his natural father. No further action is scheduled or anticipated in this minor's case.

REASONS WHY THE WRIT SHOULD BE DENIED

I. The Oklahoma Decision Was Correct in Determining the State's Policy Interest in Preserving the Treatment and Rehabilitation Rights of a Juvenile Charged With Delinquency to Be Paramount to Petitioner's First Amendment Right to Publish the Identity of the Juvenile.

Petitioners contend that the Court should exercise its certiorari jurisdiction as to the decision of the Supreme Court of Oklahoma because it "carves an unprecedented exception to the history of the First Amendment and the teachings of this Court, that the imposition of a prior restraint upon information *openly obtained* concerning judicial proceedings is presumptively invalid," (emphasis added) citing *Nebraska Press Ass'n v. Stuart*, — U.S. —, 96 S. Ct. 2791 (1976), *Cox Broadcasting Corp. v. Cohn*, 421 U.S. 469 (1975), and *New York Times Co. v. United States*, 403 U.S. 713 (1971). However, since the manner in which petitioner posits its contentions belies the suspicious means by which reporters initially gained access to the child's identity, the factual underpinning necessary to support the design of petitioner's argument is fatally defective. If the juvenile court[2] and police[3] records were not absolutely protected by statute,

[2] OKLA. STAT. 10 §1125 (Supp. 1975) provides:

> The court shall make and keep records of all cases brought before it. Such records shall be open to public inspection only by order of the court to persons having a legitimate interest therein, except that all records of proceedings in adoption cases and all papers and books relating thereto shall remain confidential as provided by law. The court shall devise and cause to be printed such forms for social and legal records and such other papers as may be required.

[3] OKLA. STAT. 10 §1127 (Supp. 1975) requires:

> (a) Disposition or evidence concerning a child under this act is not proper evidence against a child in any civil or criminal proceeding or other cause in any Court for any purpose whatsoever.
>
> (b) That all police records shall be confidential and not open to public inspection.

if the juvenile court proceedings were not required to be held privately,[4] and if reporters had initially been granted or gained access to the child's identity other than by modes violative of explicit state law, petitioner's argument would have merit under the *Cox* rationale. But despite petitioner's repeated assertions that the information was "publicly available and lawfully obtained"[5] (*e.g.*, Petition at 12), this was simply not the case—the reporter's query to Judge Halley about where "L.B.'s hearing was to be held, *before* the initial detention hearing on July 28, reveals that at least one reporter had already obtained the child's name, presumably from police contacts and not from the so-called "open" hearing. It should be obvious that police records regarding the apprehension of juveniles are confidential whenever or however they are compiled and do not lose their private status if inadvertently or intentionally relinquished, arrogated or wrongfully disseminated.

In his ruling from the bench following petitioner and defense counsel's procedural and substantive arguments on August 16, respondent judge clearly negated petitioner's factual proposition regarding the *de facto*, unobstructed nature of the local juvenile court proceedings:

> When the Court entered its pre-trial order, [of August 3] it was of the opinion that those statutes which make Ju-

[4] OKLA. STAT. 10 §1111 (Supp. 1975) regarding the conduct of hearings provides:

> All cases of children shall be heard separately from the trial cases against adults. The hearings shall be conducted in an informal manner, according to the rules of evidence, and may be adjourned from time to time. The hearings shall be private unless specifically ordered by the judge to be conducted in public, but persons having a direct interest in the case shall be admitted. Stenographic notes or other transcript of the hearings shall be kept as in other cases, but they shall not be open to public inspection except by order of the court . . .

[5] Petitioner reiterates this assertion in its petition no less than sixteen times as if repetition of what may be a half-truth will somehow make it whole.

> venile Court files confidential, the statute that makes police files confidential where they concern juveniles and the statutes which provide for closed hearings in juvenile cases would be totally ineffective if the closed hearing and the confidentiality of the files were open for public inspection or for the inspection of the news media; that those statutes would be totally abortive if the news media could find through confidential sources or otherwise the name of a juvenile and, thereafter, without his permission or the Court's permission, take his photograph.

Transcript of hearing, pp. 95-6.

In an opinion by Mr. Justice White, the Court in *Cox Broadcasting Corp. v. Cohn*, 421 U.S. 469 (1975), acknowledged that "there is a zone of privacy surrounding every individual, a zone within which the State may protect him from intrusion by the press, with all its attendant publicity." *Id.* at 487 (footnote omitted). The issue in *Cox* did not, as here, involve the appropriation of one's name or photograph by a physical or other tangible intrusion into a private area. *Id.* at 489. The Court, at the outset, recognized the serious confrontation between the common law tort for invasion of privacy and the First Amendment freedom of the press and absolutely declined to address the broader question of whether the press can ever be criminally or civilly liable for publishing information that is neither false nor misleading, but accurate however damaging it may be. *Id.* at 490. Instead, the Court focused upon the narrower issue between the press and the right of privacy, namely, whether a state may impose sanctions on the accurate publication of the name of a rape victim obtained from *public records*—more specifically from judicial records which are maintained in connection with the public prosecution and which themselves are open to *public inspection*. *Id.* at 491. The important responsibility of the news media to fully and accurately report governmental proceedings in order to assure beneficent public scrutiny was juxtaposed on

the scales with an individual's right to maintain his protective zone of privacy in an apparent balancing test:

> Thus, even the prevailing law of invasion of privacy generally recognizes that the interests in privacy fade when the information involved already appears on the public record. The conclusion is compelling when viewed in terms of the First and Fourteenth Amendments and in light of the public interest in a vigorous press.

421 U.S. at 494-5. Because the information about the rape victim had been obtained from public records, the majority held that a state could not, consistently with the First and Fourteenth Amendments, impose sanctions upon or restrict the accurate publication of such information by the news media.

> We are reluctant to embark on a course that would make public records generally available to the media but forbid their publication if offensive to the sensibilities of the supposed reasonable man. Such a rule would make it very difficult for the press to inform their readers about the public business and yet stay within the law. The rule would invite timidity and self-censorship and very likely lead to the suppression of many items that would otherwise be put into print and that should be made available to the public. At the very least, the First and Fourteenth Amendments will not allow exposing the press to liability for truthfully publishing information released to the public in official court records. *If there are privacy interests to be protected in judicial proceedings, the States must respond by means which avoid public documentation or other exposure of private information.*

421 U.S. at 495-6 (emphasis added). The State of Oklahoma has unequivocally responded with explicit, statutory mandates safeguarding the confidentiality of police and court proceedings pertaining to juveniles.[6] Surely the unlawful, unwarranted or

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[6] *See* notes 2-4, *supra*.

otherwise improper release or acquisition of confidential juvenile arrest records does not change their character so that they may thereafter be classified as "public records." Whenever or however petitioner obtained the child's name, it knew, or should have known, that it was a confidential arrest report or proceeding, relating solely to an 11-year-old juvenile, the publication of which would violate state law. Ignorance of the law has never been an excuse.

It is important to note that the Court in *Cox* declined to declare the Georgia code section unconstitutional. And contrary to petitioner's argument, *Cox* is not dispositive: the Court restricted the effect of its decision by refusing to rule on the permissibility of state policy delimiting public access to certain records, specifically including juvenile court proceedings:

> We mean to imply nothing about any constitutional questions which might arise from a state policy not allowing access by the public and press to various kinds of official records, such as records of juvenile-court proceedings.

Id. at 497 n. 26.

By construing the legislative policy in accord with the dictates of its statutory purpose clause,[7] the court below appropriately held that the Oklahoma statutes were sufficiently broad to permit the trial court, under the circumstances, to enjoin the publication of the name and photograph of the child.

In *New York Times Co. v. United States*, 403 U.S. 713 (1971), this Court denied the government's request for an in-

[7] OKLA. STAT. 10 §1129 (Supp. 1975), prescribes:

> This Act shall be liberally construed, to the end that its purpose may be carried out, to wit: That the care and custody and discipline of the child shall approximate, as nearly as may be, that which should be given by its parents, and that, as far as practicable, any delinquent child shall not be treated as a criminal.

junction proscribing publication of a previously classified study known as "The Pentagon Papers." The decision appeared to carve out a very narrow exception to the rule prohibiting prior restraints, i.e., cases involving a clear and present danger to the national security. There were important public policy considerations involved in that case concerning the public's right and need to know in order to understand and control the secrets and abuses of government. Doubtless this right to know extends to other areas of general interest which are of far less national or even local concern, but it is highly questionable whether the same considerations are applicable to the publication of the names of children.

Petitioner contends that this Court, in recognizing only a national security exception to the freedom of the press, has refused to acknowledge or consider other competing governmental interests in cases not involving national security. While noting that the presumption against the use of a "gag rule" is a difficult obstacle to surmount, the Court in *Nebraska Press Ass'n v. Stuart*, — U.S. —, 96 S.Ct. 2791 (1976), acknowledged in some instances a prior restraint might be permissible.

> Our analysis ends as it began, with a confrontation between prior restraint imposed to protect one vital constitutional guarantee and the explicit command of another that the freedom to speak and publish shall not be abridged. We reaffirm that the guarantees of freedom of expression are not an absolute prohibition under all circumstances, but the barriers to prior restraint remain high and the presumption against its use continues intact. We hold that, *with respect to the order entered in this case prohibiting reporting or commentary on judicial proceedings held in public, the barriers have not been overcome;* to the extent that this order restrained publication of such material, it is clearly invalid. To the extent that it prohibits publication based on information gained from other sources, we conclude

> that the heavy burden imposed as a condition to securing a prior restraint was not met.

96 S. Ct. at 2808 (emphasis added). The order struck down by the Court prohibited reporting or commentary on a public, judicial proceeding. The pretrial order challenged herein emanated from a private hearing and merely proscribed identifying the juvenile; it did not interdict commentary on what occurred at the proceeding.

The Oklahoma Supreme Court reversed that portion of the pretrial order relating to insuring a fair trial and further narrowed the effect of the ruling so as to equitably align the competing interests by adopting the juvenile court bar-press directives of Kentucky.[8]

With the exception of the August 3, 1976 hearing, the press was allowed to attend the hearings and report everything that transpired therein, except the name and photograph of the accused child. Thus, the pretrial order as ultimately upheld by the Oklahoma Supreme Court, is fashioned narrowly enough to secure precise, statutory objectives—the reasonable protection of a juvenile suspect's identity and preservation of his opportunity for rehabilitation—without prohibiting access to or comment on the ongoing proceedings and without discouraging the circulation of ideas or concepts regarding the proceedings among the scrutinizing public. In *Carroll v. Commissioners of Princess Anne*, 393 U.S. 175 (1968), the Court said:

> The state may not employ means that bluntly stifle fundamental personal liberties when the end can be more narrowly achieved . . . In other words, the order must be tailored as precisely as possible to the exact needs of the case . . . An order issued in the area of First Amendment

[8] "Guidelines on the Reporting of Juvenile Court Proceedings," 35 Ky. St. B. J. 72 (1971).

> rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order.

Id. at 183-4. From this language the Court indicates that an order could be drafted with limited prior restraints—if tailored precisely to the exact needs of the competing interest.

In *Miami Herald Publishing Company v. Tornillo*, 418 U.S. 241 (1974), the Court struck down Florida's right of reply statute which granted certain candidates equal space to answer newspaper criticisms. The Court held that governmental regulation should not take the place of editorial control and judgment. But the Court's interpretation of the meaning of the First Amendment permeates this decision and that construction allows a balancing test in a proper case. Indeed, such a test can be used and the First Amendment is subject to reasonable restrictions when necessary to safeguard public policy interests. *See, United States v. Painters Local Union No. 481*, 79 F.Supp. 516 (D.C. Conn. 1948).

The above cases illustrate the varying potency of the presumption of constitutional invalidity of a prior restraint depending upon the importance of the national or public interest involved. The presumption is ostensibly at full strength when the press seeks to enlighten the public on governmental excess or deviance. Balancing tests are more frequently employed when the issue concerns local groups or interests, and there is a strong public policy favoring the confidentiality of records, police contact and court action relating to juveniles.

The Oklahoma Supreme Court in its decision in this case balanced the child's right to anonymity against the public's right to know. They found this right to anonymity to be an integral part of the child's right to rehabilitation.

The entire basis of the separate juvenile court system from its inception at the turn of the last century was that children

should be treated with an end towards rehabilitation rather than punished as they would be in the adult criminal system. This underlying purpose of the juvenile justice system has been recognized by this Court in *Kent v. United States*, 383 U.S. 541, 554 (1966), in which the Court declared: "The objectives are to provide measures of guidance and rehabilitation for the child and protection for society." One year later this Court reiterated this stance in *In re Gault*, 387 U.S. 1, 15-16 (1967): "The child was to be 'treated' and 'rehabilitated' and the procedures, from apprehension through institutionalization, were to be 'clinical' rather than punitive."

The rehabilitative treatment of children contemplated by juvenile court acts is intended to serve the welfare of both child and society. The child is to be protected from additional harm and to be enabled to become a functioning, healthy adult. Society's interests are protected and enhanced through the transformation of a potential criminal or potential, perpetual charge upon the public welfare rolls into a productive, useful law-abiding citizen.

It is frequently said that it is the law's policy "to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past." *Gault*, 387 U.S. at 25. Referring to the statutory trade off imposed upon juveniles supplanting procedural regularity with individualized treatment (see discussion *infra*), the Court, speaking through Mr. Justice Fortas, indicated approval of state confidentiality policies:

> [T]here is no reason why, consistently with due process, a State cannot continue if it deems it appropriate, to provide and improve provision for the confidentiality of records of police contacts and court action relating to juveniles.

Id. at 24.

The right to rehabilitation, of which the right to anonymity is an integral part, has found support in the purpose clauses of most juvenile acts. The Oklahoma juvenile code is typical of these as it provides at OKLA. STAT. 10 §1129 (Supp. 1975):[9] "[t]hat the care . . . of the child shall approximate as nearly as may be, that which should be given by its parents, and that, as far as practicable, any delinquent child shall not be treated as a criminal."

In addition to its statutory basis, and perhaps more importantly when this right is to come into conflict with the highly protected First Amendment freedoms, is the constitutional basis for the child's right to rehabilitation. Numerous federal and state courts have found that procedural and substantive due process, guaranteed by the Fourteenth Amendment, require the provision of treatment for the noncriminally committed. In *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972), the district court concluded from an analysis of this Court's decisions in *Gault* and *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), that the right to treatment for juveniles is constitutionally required by procedural due process. Since due process is applicable to juvenile court proceedings, but does not require a jury trial at delinquency adjudications, the court deduced that:

> the constitutional validity of present procedural safeguards in juvenile adjudications, which do not embrace all of the rigorous safeguards of criminal court adjudications, appears to rest on the adherence of the juvenile justice system to rehabilitative rather than penal goals.

346 F. Supp at 1364. Based on this assumption, procedural due process demands that a right to treatment for juveniles be the *quid pro quo* for the lack of complete procedural safeguards.

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[9] *See* note 7, *supra*.

> Rehabilitation, then, is the interest which the state has defined as being the purpose of confinement of juveniles. Due process in the adjudicative stages of the juvenile justice system has been defined differently from due process in the criminal justice system because the goal of the juvenile system, rehabilitation, differs from the goals of the criminal system, which include punishment, deterrence and retribution. Thus due process in the juvenile justice system requires that the post-adjudicative stage of institutionalization further the goal of rehabilitation.

346 F. Supp. at 1364. Other juvenile cases applying a due process right to treatment include: *Martarella v. Kelley*, 349 F. Supp. 575 (S.D. N.Y. 1972); *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd and remanded*, 535 F.2d 864 (5th Cir. 1976); and *Nelson v. Heyne*, 491 F.2d 352 (7th Cir. 1974).

Both equal protection of the law, guaranteed by the Fourteenth Amendment, and the Eighth Amendment ban against cruel and unusual punishment have likewise been used as a basis for the provision of the treatment necessary to rehabilitation of the minor. Equal protection denials have been found in cases involving the disparity between maximum length of confinement of juveniles and that of adults who have committed the same offense. While the disparity *per se* has not yet been recognized as a deprivation of equal protection, the indeterminate juvenile disposition is said to be necessary to accomplish rehabilitation. *See, Smith v. State*, 444 S.W.2d 941, 945 (Tex. Civ. App. 1969). However, if rehabilitative treatment is not provided, confinement in excess of the maximum criminal sentence would be a violation of equal protection. *See. e.g., In re Wilson*, 438 Pa. 425, 429, 264 A.2d 614, 618 (Pa. 1970), *United States ex rel. Sero v. Preiser*, 506 F.2d 1115 (2nd Cir. 1974), *cert. denied*, 421 U.S. 921 (1975).

In *Haziel v. United States*, 404 F.2d 1275 (D.C. Cir. 1968), Judge Bazelon strongly suggested that the denial of statutorily required treatment to an indigent juvenile is an equal protection violation, when an affluent juvenile can afford to secure private treatment.

> We do not find it necessary to determine the difficult question whether the statutory promise of noncriminal treatment in all but exceptional circumstances may be denied the juvenile because of the lack of adequate facilities. We will recognize the undeniable limitations upon the resources available to the Juvenile Court. On the other hand, we cannot ignore the mockery of a benevolent statute unbacked by adequate facilities. And to the extent that a juvenile with more affluent parents may avoid waiver because of the availability of private-financed treatment and rehabilitation, constitutional issues may lurk in the problem.

404 F.2d at 1280.

Certain practices and conditions in which the noncriminally committed are confined have been enjoined as violative of the Eighth Amendment. *Inmates of Boy's Training School v. Affleck*, 346 F. Supp. at 1365-67, (barren, unsanitary conditions of rooms and solitary confinement); *Martarella v. Kelley*, 349 F. Supp 575 (S.D. N.Y. 1972) (confinement of young girls in ancient maximum security institution); *Morales v. Turman*, 364 F. Supp. 166, 173-174 (E.D. Tex. 1973), 393 F. Supp. 53 (E.D. Tex. 1974), *rev'd and remanded*, 535 F.2d 864 (5th Cir. 1976), (forms of punishment: physical abuse, solitary confinement, tear gassing).

Without exposition, other courts have declared that certain practices violate the Eighth Amendment. Routine beatings of juveniles with a "fraternity paddle" and the administration of tranquilizing drugs, not as therapy, but to control excited be-

havior, was found to be cruel and unusual. *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1973), *aff'd*, 491 F.2d 352 (7th Cir. 1974). The two week long solitary confinement of a juvenile in a "strip room" was found to be cruel and unusual. *Lollis v. New York State Department of Social Services*, 328 F. Supp. 1115 (S.D. N.Y. 1971).

Thus, ample authority exists for the constitutional pretext, recognized by the Oklahoma decision, of the juvenile's right to proper treatment, i.e., protection of his anonymity so as to preserve his opportunity for rehabilitation.

As aforesaid, unlike the adult system of criminal justice, the juvenile system is treatment oriented with its primary aim rehabilitation of the child to the extent that ultimately the child may be reintegrated into society. Consistent with this purpose Oklahoma has, along with the majority of states, statutorily decreed that an adjudication of delinquency will not operate to impose the civil disabilities that ordinarily result from a criminal conviction nor will such an adjudication be deemed a conviction. OKLA. STAT. 10 § 1127 (Supp. 1975).[10] This provision illustrates the states' position that children are to be helped by their contacts with the judicial system and protected from adverse consequences that might otherwise result. It has, however, been recognized that the noble purpose of the juvenile code has, unfortunately, never been realized. *In re Gault*, 387 U.S. 1 (1967). While rehabilitation may often be affected, avoidance of disabilities is not so successful. A juvenile record may not only limit employment opportunities, it may also limit educational opportunities or the chance to enlist in one of the branches of the armed forces. Lastly, it may result in social ostracism by a community that, very naturally, fails to differentiate between crimes simply because the perpetrator of one happens to be under a certain age and the perpetrator of another,

[10] *See* note 3, *supra*.

over it. *See* Gough, *The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status*, 1966 WASH. U. L. Q. 147, 168-174.

In attempts to further prevent disabilities, legislatures have enacted other provisions aimed at protecting juveniles from adverse publicity as a result of their involvement with the juvenile court.

For example, nearly every state specifically requires that juvenile court records be closed to the general public. Exceptions are, of course, authorized in some of these states and in them access may almost always be obtained with the court's permission. Of the seven states that do not limit access to records, Arizona, Arkansas, Indiana, Iowa, Kentucky, Vermont, and West Virginia, only Iowa statutorily states that the legal record of the juvenile court is a public one. IOWA CODE ANN. § 232.54 (1969).

Additionally, in nearly every state limitations are placed upon attendance at juvenile hearings. Most states presumptively exclude the general public while providing for the admission with consent of the court of other persons with an interest in the case. These provisions are similar to OKLA. STAT. 10 § 1111 (Supp. 1975).[11] In only four of those jurisdictions are the media exempted from these limitations and in three of those four, Montana, Utah, and Iowa, the court may, under certain circumstances impose restrictions upon attendance. Only the Illinois statutes impose no additional conditions on media attendance.

Nineteen jurisdictions go beyond mere limitation on access to hearings and place specific restrictions on the kind of information that the news media may make public. The most common form of restriction is to prohibit the publication of identifying information such as name, picture, or address of either a child or that child's parents or guardian.

[11] *See* note 4, *supra*.

These prohibitions are rarely absolute and, almost without exception, the court has the authority to authorize publication when it deems the circumstances require. Additionally, the right to publish information may hinge upon the nature of the alleged offense as well as upon previous adjudications of delinquency, *see, e.g.*, MONT. REV. CODES ANN. § 10-1241 (Supp. 1975); ALASKA STAT. § 47.10.090 (Supp. 1975); GA. CODE ANN. § 24A-3503(g) (1976); MISS. CODE ANN. § 43-21-19 (1972).

These provisions and others like them evidence the recognition by nearly every state of the important policy interest in maintaining the anonymity of a juvenile processed by the juvenile system. The right rarely extends beyond placing a limitation upon the publication of identifying information and as in Oklahoma, usually allows the media the unbridled discretion to publish any information concerning the alleged offense itself. Normally only the name, picture and address of the juvenile and his parents are protected. *See, e.g.*, COLO. REV. STAT. ANN. (Cum. Supp. 1975). Thus, a proper balance is struck; the public's right to know what is occurring is protected at the same time the juvenile's right to anonymity is assured.

II. The Oklahoma Supreme Court Acted Properly in Considering Petitioner's Appearance a General Appearance for Defect of Service Purposes.

The Oklahoma Supreme Court in its decision correctly applied the state law which has for some time held that the filing of a motion to vacate a judgment on non-jurisdictional as well as jurisdictional grounds acts as a general appearance waiving all defects in service. *E.g., Daniel v. Daniel*, 348 P.2d 185 (Okla. 1959) and cases cited therein; *Porter v. Oklahoma Bacone College Trust*, 346 P.2d 335 (Okla. 1959), *cert. denied*, 362 U.S. 927, *rehearing denied* 362 U.S. 984 (1960). This has long been the rule in most jurisdictions of this country and is the

subject of a lengthy annotation. Annot. 31 A.L.R.2d 262 (1953).

In making its decision to enter an appearance and contest the Pretrial Order, petitioner's "Hobson's Choice" was at best illusory; petitioner was left with the choice any litigant must make —whether to enter a law suit and risk an adverse decision on the merits, or to ignore an existing order and dodge attempts at proper service. The case of *United States v. Dickinson*, 465 F.2d 496, 509 (5th Cir. 1972), *cert. denied*, 414 U.S. 979 (1973), *aff'd. on remand*, 476 F.2d 373 (5th Cir. 1973), presents no special problem for petitioner as it holds that an order "issuing out of a court having subject matter and personal jurisdiction must be obeyed." This Court in *Nebraska Press Ass'n v. Stuart*, —- U.S. —, 96 S. Ct. 2791, 2806 n.9 (1976), mentioned the option available to petitioner in this case was to simply ignore the order.

Were this an action to enforce by contempt powers the August 3rd order, petitioner might properly raise the defects of notice and service existing at the time of the initial order as a defense. The present posture of this case, however, is that petitioner seeks an affirmative writ to ban the enforcement of an order issuing out of the August 16th hearing at which petitioner was heard fully on the merits. Their Application to Quash and Vacate, based as it is on substantive First Amendment claims, and their admitted receipt of the Pretrial Order is evidence of their knowledge of the facts and issues which had been presented to respondents before entering the order. Petitioner cannot now raise the procedural defects of the August 3rd hearing as a denial of due process at the August 16th hearing. Given the settled state of the law and the limited relevance of petitioner's claim it is not surprising that the Oklahoma Supreme Court dispensed with the issue in its perfunctory manner.

Petitioner next asserts that the Pretrial Order "was vague as to whom it applied." While the Order's language, "all mem-

bers of the news media" is less than clear, the next sentence setting forth upon whom service should be made would cure any defects in the earlier wording. In *Winters v. People of the State of New York*, 333 U.S. 507 (1948), this Court discussed the dangers inherent in criminal statutes which do not clearly indicate to whom they apply. This case presents none of these problems since before any penalty may be exacted, service must be accomplished as is mandated by the Order.

While petitioner apparently now attacks the substance of the order on vagueness grounds, this claim was not presented to the Oklahoma Supreme Court. Likewise the language "facts which might lead to the identity of the juvenile" is nowhere contained in any of the pretrial orders issued by respondents or which were the subject of review by the court below.

CONCLUSION

The Supreme Court of the State of Oklahoma has rendered an authoritative opinion on the issues presented by this case. For the reasons set forth herein, respondents respectfully request that the Petition for Writ of Certiorari to review that decision be denied.

Respectfully submitted,

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Certificate of Service

I, David Howard, hereby certify that I have, this 23rd day of January, 1977, sent by First Class Mail, postage prepaid, a copy of the foregoing "Brief in Opposition" to the following:

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